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| APPLICATION NO.                                                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|----------------------------------------------------------------|-------------|----------------------|-------------------------------|------------------|
| 10/750,438                                                     | 12/31/2003  | James R. Butler      | API-1023-COS-922              | 1790             |
| 25264                                                          | 7590        | 03/24/2005           |                               |                  |
| FINA TECHNOLOGY INC<br>PO BOX 674412<br>HOUSTON, TX 77267-4412 |             |                      | EXAMINER<br>BRUNSMAN, DAVID M |                  |
|                                                                |             |                      | ART UNIT                      | PAPER NUMBER     |
|                                                                |             |                      | 1755                          |                  |
| DATE MAILED: 03/24/2005                                        |             |                      |                               |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                               |  |
|------------------------------|-------------------------------|-------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/750,438 | Applicant(s)<br>BUTLER ET AL. |  |
|                              | Examiner<br>David M Brunsman  | Art Unit<br>1755              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-10, 13, 16, 18, 19 and 24-27 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 7, 11, 12, 14, 15, 17 and 20-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031231</u> . | 6) <input type="checkbox"/> Other: ____                                                |

Art Unit: 1755

Claims 4, 6, 7, 11, 12, 14, 15, 17 and 20-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record fails to teach or suggest using a carrier oil having a flashpoint of about 450 F or higher, using a carrier oil having the components in the amounts recited in claims 11 and 20, combining the asphaltite and carrier oil at a temperature between 200 and 400 F, mixing the asphaltite into the carrier oil without added heat and, fails to teach or suggest the improved results obtained when including a thermoplastic elastomeric polymer in the amount of about 1-6% to produce a PMA having a compatibility test value of 20 C or less.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-10, 13, 16, 18, 19, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2492848.

The reference teaches, see example 1, a composition comprising 100pts asphalt, 100pts gilsonite, 50pts petrolatum and 300 parts Stoddard solvent. The adjective "about 20 and 30 weight percent" in claims 5, 13 and 18 is considered to include the above proportions. The properties recited in claims 8, 16, 24 and 25 would be expected to be exhibited by the reference composition because it includes every compositional limitation of the instant claims. A chemical composition and its properties are inseparable.

Claims 1, 2, 8-10, 16, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4094696.

Art Unit: 1755

The example of the reference teaches a paving composition obtained by mixing 1 part gilsonite and 1 part naptha at 140-150 F and then mixing that into asphalt. The properties recited in claims 8 and 16 would be expected to be exhibited by the reference composition because it includes every compositional limitation of the instant claims. A chemical composition and its properties are inseparable.

Claims 18, 19 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4033784.

Example 1 of the reference teaches a composition comprising 20% gilsonite in heavy aromatic oil. The properties recited in claims 24 and 25 would be expected to be exhibited by the reference composition because it includes every compositional limitation of the instant claims. A chemical composition and its properties are inseparable.

Claims 18, 19, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4282037.

The abstract of the reference teaches the combination of 33 (about 30) – 95% gilsonite in a petroleum hydrocarbon oil (see also column 2, lines 52-59). The properties recited in claims 24 and 25 would be expected to be exhibited by the reference composition because it includes every compositional limitation of the instant claims. A chemical composition and its properties are inseparable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1755

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David M Brunsman  
Primary Examiner  
Art Unit 1755

DMB

A handwritten signature in dark ink, appearing to read 'D. Brunsman', with a long horizontal flourish extending to the right.